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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 21st October, 2024

No. 13/2/160-HII(2)-2024/16050.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **23/2023** dated **16.08.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

UMA SHANKAR S/O SH. JAGESHWAR PARSHAD, H.NO.3298, MOULI JAGRAN COMPLEX,
NEAR POLICE STATION , U.T. CHANDIGARH. (Workman)

AND

M/S J.S. PEST CONTROL, SCO NO. 393, TOP FLOOR, SECTOR 37-D, CHANDIGARH
THROUGH ITS PROPRIETOR/PARTNER. (Management)

AWARD

1. Uma Shankar, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was appointed as Sprayer by the management in the month of April, 2001. The workman remained in the uninterrupted employment up to 24.11.2022 when his services were illegally and wrongfully terminated by refusal of work. The workman was drawing ₹ 11,762/- per month as wages at the time of termination which were less than the minimum rate of wages plus ₹ 3,000/- on voucher which is not taken into salary account. On 24.11.2022 as usual the workman requested the management to adjust ₹ 3,000/- in his salary account so that there should not be any loss to the workman in provident fund, ESI and gratuity benefits. The management not only refused to adjust the amount in regular wages but also refused work to workman without assigning any reason or notice. The

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refusal of work which amounts to termination is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25F of the ID Act. No charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. The persons junior to him were retained in service when the services of the workman were terminated which is violation of Section 25G of the ID Act and makes the termination void. For his reinstatement, the workman served upon the management a demand notice dated 29.11.2022. The management neither denied the contents of the demand notice nor took the workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention. The Conciliation Officer intervened but the dispute could not be settled within the stipulated period as the management did not appear on any date fixed for settlement. The termination is illegal, wrongful, motivated, against the principle of natural justice and unfair labour practice. The workman remained un-employed during the period i.e. from the date of termination to till date. Prayer is made that the workman may be reinstated with continuity of service along with full back wages without any change in his service condition.

3. On notice, management contested the claim statement by filing written statement dated 05.10.2023 (filed on 05.10.2023), wherein preliminary objections are taken on the ground that the present reference does not fall within the ambit of Section 2A of the ID Act as the management never terminated the services of the petitioner-claimant (*here-in-after 'workman'*), rather the workman himself abandoned the job. If the workman is still interested in job, he may join the management on the same terms & conditions on which he was earlier working with the management.

4. Further on merits, it is stated that the workman joined the management in the month of April, 2001 and was drawing wages ₹ 11,726/- per month. The management has never refused work to the workman. Rather the workman of his own left the job without assigning any reason. The workman has worked till the date of abandonment of his job in the month of November, 2022 without any intimation to the management and thereafter he did not turn up for duty. The management has not violated the provisions of ID Act. An offer had also been made to the workman before the Conciliation Officer to join the duties but the workman failed to join the same. The dispute could not be settled due to adamant attitude of the workman. Further similar stand is taken as taken in the preliminary objections. It is further stated that since the services of the workman have never been terminated by the management and the workman has himself abandoned his job by not reporting for duty with the management, the question of reinstatement with back wages does not arise. The workman not entitled to any back wages because he has abandoned his job on his own without prior intimation to the management as a result of which the management has to suffer loss. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim may be dismissed with exemplary costs in the interest of natural justice, equity and fair play.

5. The workman filed rejoinder on 20.11.2023 wherein the contents of the written statement are denied as wrong and incorrect and averments of claim statement are reiterated.

6. From the pleadings of parties, following issues are framed vide order dated 20.11.2023:-

1. Whether the termination of the services of workman is illegal ? If so, to what effect and what relief he is entitled to ? OPW
2. Whether the present reference is not maintainable ? OPM
3. Relief.

7. In evidence the workman Uma Shankar examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 29.02.2024 Learned Representative for the workman closed evidence in affirmative.

8. On the other hand, management examined MW1 Rajat Oberoi - Senior Executive, M/s J. S. Pest Control, who tendered his affidavit Exhibit 'MW1/A' along with print out chat on whatsapp vide Mark '1'. On 29.07.2024 Learned Representative for the management closed oral evidence. On 14.08.2024 Learned Representative for the management closed documentary evidence.

9. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issue No. 1 :

10. Onus to prove this issue is on the workman.

11. Under this issue the workman Uma Shankar examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity.

12. On the other hand, to controvert the evidence led by the workman, management examined MW1 Rajat Oberoi, who vide his affidavit Exhibit 'MW1/A' deposed that the present reference does not fall within the ambit of Section 2A of the ID Act as the management has never terminated the services of the petitioner (*here-in-after 'workman'*), rather the workman has himself abandoned his job. If the workman is still interested in the job, he may join the management on the same terms & conditions on which he was earlier working with the management. The workman joined the management in the month of April, 2001 and worked till November, 2022. The management has never refused work to the claimant. Rather the workman of his own left the job without assigning any reason. The workman had worked with the management till the abandonment of his job in the month of November, 2022 without any intimation to the management and thereafter he did not turn up for duty. The management has not violated the provisions of the ID Act as alleged in the claim. Workman Uma Shankar flashed a whatsapp message to the deponent on his Phone No.9876641145 from mobile phone of the workman i.e. Mobile No. 9876410581 on 23.11.2022 that "*sir sorry kal se main aur Chinto duty per nhi aaenge. Reason-salary*". The same being electronic message, therefore certificate under Section 65B of Evidence Act is attached with this affidavit. MW1 further deposed that besides above an offer had also been made to the workman before the Conciliation Officer to join the duties but the workman failed to join the same. The dispute could not be settled due to adamant attitude of the workman. In the cross-examination of the workman, further an offer had been given to the workman to join the duties, but he failed to join the duties. The only intention of the workman is to get the money from the management. The allegation that termination order passed is totally illegal, unjustified, against the provisions of natural justice, equity and fair play is wrong and empathetically denied. No verbal termination order has ever been passed by the management, rather the workman has himself abandoned his job and did not turn up for duty till date. Since the workman abandoned his job on his own without intimation to the management, so no compensation, no notice etc. was required and the question of reinstatement with back wages does not arise. The workman is not entitled to any back wages because he has abandoned his job on his own without any prior intimation to the management as a result of which the management has to suffer loss. The workman has not pleaded in the claim statement and in the affidavit that he is unemployed and that being the position in fact, the workman is not entitled for any back wages.

13. From the oral as well as documentary led by the parties, it comes out that workman has alleged that he was appointed as Sprayer by the management in April, 2001 and he remained in continuous employment of the workman up to 24.11.2022 when his services were terminated by the management with verbal order of refusing of work. So far, the date of appointment of the workman is concerned, the management in para 1 of written statement / reply on merits, categorically stated that the workman joined the management in the month of April, 2001. So far, the period of service of the workman is concerned, the management's witness MW1 in para 2 of his affidavit Exhibit 'MW1/A' categorically stated that the workman joined the management in the month of April, 2001 and worked till November, 2022. From the aforesaid facts it is proved that admittedly workman remained in un-interrupted employment of the management from April 2001 to November, 2022.

14. It is undeniable facts of the parties that the workman is a 'workman' as defined under Section 2(s) of the ID Act and the management is 'industry' as defined under Section 2(j) of the ID Act. The fact is not disputed that the workman has completed continuous service of 240 days in 12 calendar months immediately proceedings termination of his services (services being terminated on 24.11.2022). Thus, the workman fulfills the requirement of Section 25B of the ID Act. Once the workman falls within the definition of continuous service under Section 25B of the ID Act, the provisions of Section 25F of the ID Act is attracted which lays down certain conditions that an employer must comply on retrenchment of workmen. Learned Representative for the workman contended that the services of the workman were terminated on 24.11.2022 without complying with the provisions of Section 25F of the ID Act. On the other hand, the management has contested the termination claiming that the workman voluntarily abandoned the services and thus, the workman would cease to be in 'continuous service' as defined under the ID Act and Section 25F of the ID Act is inapplicable. To my opinion, the contention of the management that workman abandoned the service cannot be accepted for the reason that as and when the workman remained absent from duty, it was bounded duty of the management to issue notice asking him to report for duty and to take necessary action to terminate his services. In the present case, MW1 when put to cross-examination stated that no letter was issued to the workman for joining the duty on account of his alleged absence. The volunteer statement of MW1 that workman was telephonically informed is without any basis and thus not acceptable. In the absence of any notice issued by the management to the workman calling him to join the duty, an inference cannot be drawn that the workman has abandoned the service. As far as compliance of Section 25F of the ID Act is concerned, MW1 in his cross-examination stated that the management has not issued the workman any show-cause notice, charge-sheet and did not hold inquiry for alleged absence from duty. From the aforesaid version of MW1 accompanied with the fact that it is not the case of the management that workman was issued prior notice or offered or paid notice pay in lieu of prior notice or that workman was paid retrenchment compensation at the time of termination of his services, thus, it is proved that the management failed to comply with the conditions laid down under Section 25F of the ID Act. Thus, the termination of services of the workman without following the mandate of Section 25F of the ID Act, is illegal and hereby set aside. No weight can be given to the copy of whatsapp chat Mark 'A' as the same is neither pleaded in the written statement nor put to workman / AW1 in his cross-examination.

15. The willingness of the workman to re-join duty can be gathered from the facts & circumstances of the case and cross-examination of the workman where workman / AW1 has stated that he is ready to join the duty if back wages are paid. On the other hand, MW1 in his cross-examination stated that they are ready to reinstate the workman but they are not ready to pay back wages. MW1 stated that he cannot comment whether the management is ready to give benefit of continuity of service to the workman on his reinstatement

because he does not know the meaning of continuity of service. MW1 in his cross-examination further stated that he is ready to reinstate the workman and he on behalf of the management agree that the issue of continuity of service and back wages be left for adjudication of this Court.

16. The services of the workman were terminated w.e.f. 24.11.2022 and immediately thereafter on 29.11.2022 the workman raised the industrial dispute challenging his order of termination as illegal and seeking reinstatement with continuity of service along with full back wages. Prompt raising of industrial dispute would disprove the management's plea of willful long absence from duty. There is no ground to assume that the workman was not willing to join the duty or that he has abandoned the job.

17. It is not the case of the workman that while terminating the services of the workman juniors to him were retained in service. Further, the workman has not placed on record any document to show that after the termination of his services the management appointed new employees in his place. As such, violation of provisions of Section 25G & 25H is not proved.

18. As discussed above, verbal order of termination of services of the workman w.e.f. 24.11.2022 passed in violation to Section 25F of the ID Act is illegal, therefore, the workman will be entitled to continuity of service along with back wages.

19. As far as back wages are concerned, Learned Representative for the management argued that the workman in his claim statement and affidavit did not plead that he is unemployed, therefore, the workman is not entitled to any back wages. To my opinion, the aforesaid argument advanced by Learned Representative for the workman is devoid of merits because the workman in para 6 of the claim statement specifically pleaded that he remained unemployed during the period i.e. from the date of termination to till date. AW1 when put to cross-examination stated that at present he is not working anywhere and jobless. Learned Representative for the workman further argued that the workman is gainfully employed. To support his arguments Learned Representative for the workman referred cross-examination of AW1 wherein he stated that his family consist of himself, wife and two minor children, who are school going. Monthly expenditure of his family is about ₹ 15,000/-. He earns livelihood by doing labour work and able to earn about ₹ 18,000/- - ₹ 19,000/- per month. The workman in his claim application and affidavit Exhibit 'AW1/A' pleaded that he was drawing ₹ 11,726/- per month as wages at the time of termination of his services. The management in para 1 of written reply, on merits, also pleaded that the workman was drawing wages of ₹ 11,726/- per month. Thus, the last drawn monthly wages of the workman in the tune of ₹ 11,726/- is not disputed. To my opinion, so far gainful employment is concerned, any income arising independent of any employment cannot be computed while deciding the issue of gainful employment. In the present case, the management has failed to prove adequate remuneration out of employment received by the workman during the interregnum period. Any other amount received or earned by the workman by using his / her personal skill or experience or doing the labour work and miscellaneous work cannot be considered to be the gainful employment. It is not the case of the management that the workman is employed in any establishment during such period and is receiving adequate remuneration during any such period and the part thereof. Consequently, the management has failed to prove that the workman is gainfully employed.

20. In view of the facts & circumstances of the case, the workman is held entitled to reinstatement with continuity of service along with 75% back wages.

21. Accordingly, this issue is decided in favour of the workman and against the management.

Issue No. 2 :

22. Onus to prove this issue is on the management.

23. Learned Representative for the management argued that the present reference is not maintainable as it does not fall within the ambit of Section 2A of the ID Act. The workman has abandoned his services without assigning any reason and without intimation to the management. To my opinion, as per the detailed discussion on issue No.1 above, the management has failed to establish that the workman has abandoned the job. The management has also failed to prove the period of long absence from duty of the workman, as the workman remained in the employment of the management w.e.f. April, 2001 to 24.11.2022 and his services were terminated w.e.f. 24.11.2022 and the workman has raised the industrial dispute by issuing demand notice on dated 29.11.2022. The conciliation proceedings failed relating to the demand notice dated 29.11.2022 received in the office of Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh on 09.01.2023 and in view of the advice given by Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh vide failure report Memo No.871 dated 20.03.2023, to approach the appropriate forum for adjudication of the dispute, the workman filed the claim statement before this Court on 21.03.2023 with a valid cause of action and locus standi. Section 2A of the ID Act states that any dispute or difference between an employer and an employee that arises from the employer's termination of employee's services is considered an industrial dispute and this includes dismissal, discharge, retrenchment or any other termination. I do not find any defect so far maintainability of the present industrial dispute reference is concerned.

24. Accordingly, this issue is decided against the management and in favour of the workman.

Relief :

25. In the view of foregoing finding on the issues above, this industrial dispute is allowed. The workman is held entitled to reinstatement with continuity of service and 75% back wages. The management is directed to comply with the Award within three months from the date of publication of the same in Government Gazette failing which the management shall be liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this Award till actual realisation. Appropriate Government be informed. Copy of this Award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 16.08.2024

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 21st October, 2024

No. 13/2/161-HII(2)-2024/16046.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **38/2018** dated **27.08.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SELVI (DECEASED) THROUGH HER LEGAL REPRESENTATIVES:-

- (A) JAYA SURIYA (SON), AGED 21 YEARS, S/O SH. PICHA PULLAI
- (B) JAYA PRADASH (SON), AGED 19 YEARS, S/O SH. PICHA PULLAI
- (C) NATHAVSHA (DAUGHER), AGED 22 YEARS, D/O SH. PICHA PULLAI
- (D) PICHA PULLAI (HUSBAND), AGED 44 YEARS, S/O SH. DAYAL

ALL RESIDENTS OF H.NO.2014, MAULI JAGRAN, U.T. CHANDIGARH. (Workman) AND

THE DIRECTOR, DEPARTMENT OF INFORMATION TECHNOLOGY, CHANDIGARH
ADMINISTRATION, SECTOR 9, CHANDIGARH. (Management)**AWARD**

1. Selvi, workman has filed statement of claim under Section 2A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the workman had joined the services on 02.08.2012 as Housekeeping with the management and posted at EDC Building situated at IT Park, Chandigarh. The workman has been carrying on her work as assigned by her superiors with the management from time to time. During her tenure, her work and conduct has already been found to be satisfactory. The workman has been performing various works which were assigned by her department or her superior irrespective of the work offered to her as the workman was doing work as Peon, Chowkidar, Attendant or Carrier since her appointment as employee with the management. The workman never given any chance of complaint and there were no adverse remarks against her. The workman being fully eligible had applied and accordingly she was appointed as Housekeeping with the management as her services were required. The department had also put her name on muster roll and salary is drawn in her saving bank account No.6063643934 maintained with Indian Bank, NAC, Manimajra, Chandigarh. The workman had come to know from the reliable sources that her services along with 6 other workmen are going to be terminated and the workman is to be entrusted to the contractor. The workman along with other 6 workmen moved representation dated 23.11.2015. The workman had completed 1214 days on the date of her removal by the management from its office, which is more than 90 days. The workman is married and having responsibility of her family. The lives of the workman and her wards may be ruined, if her services are terminated, therefore, the workman may be reinstated in the interest of justice and future of her children. On 01.12.2015 the management told that the services of the workman along with 6 other workmen are no more required in the department and they have to join their services under contractor, if the workman / workmen want to work with the management. Therefore, all the workmen had

given a representation dated 01.12.2015 to their department for not to remove them from their services, since they are working from the last so many years. The management had crossed all the limits and without assigning any reason and prior notice had terminated the services of above said workmen. The workman has not received monthly salary and she apprehends that the management might have got her signatures on such documents and makes her to come on the roads. The services of the workman are required by the management as evident from the fact that the management had deployed another person in her place through outsource / contractor. The management was not satisfied with the services of outsource employees. The workman and other 6 workmen had filed Original Application No.0060/01141-CH of 2015 titled Arvind & Others Versus Chandigarh Administration & Others before the Learned Central Administrative Tribunal (CAT) which was drawn on 30.08.2017 with liberty to avail the remedies available to the workman. The termination of the services of workman by the management is totally illegal, mala fide, arbitrary, null & void and in gross violation of the statutory provisions of the ID Act and against the principle of natural justice, equity and good conscience on the ground that the services of the workmen have been terminated on account of unfair labour practices, the act of terminating the services of the workmen are cryptic, the workmen were not supplied with the copies of relied upon documents which has caused material prejudice to them, no notice or retrenchment compensation was paid to the workman under Section 25F of the ID Act, no preference is given to the workman at the time of termination, the workman were not afforded the opportunity of defence at any time, the other persons have been kept against the post of workmen and as such the verbal order of termination is violation of Section 25H of the ID Act, no proper and valid inquiry was held against the workmen and their services have been terminated against the principles of natural justice. Besides, the principle of 'first come last go' has been violated and has not been adopted by the management, though it is mandatory. Now the management again has victimized the workman and has terminated her services arbitrarily and illegally. Previously the workman had submitted demand notice dated 19.12.2017 to the management and before Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh. The Conciliation Officer initiated conciliation proceedings in the matter of industrial dispute so raised by the workman but ultimately the conciliation proceedings failed on 13.03.2018 and the workman was advised to refer Section 2A of the ID Act and accordingly this claim. Prayer is made that order of dismissal dated 01.12.2015 may be declared as illegal being in violation of labour law and principles of natural justice and the workman may be ordered to be reinstated in to service of the company with all service benefits including full back wages and continuity of service from the date of her illegal termination.

2. On notice, the management appeared through Law Officer and contested the claim by filing written statement dated 22.11.2018 filed on 07.02.2019 wherein preliminary submissions are made to the effect that the workman was hired as Housekeeping Staff by the employer/management directly on daily wages and was deployed at EDC Building (Entrepreneur Development Centre) at Rajiv Gandhi Chandigarh Technology Park, Chandigarh in the year 2012-13. As a policy matter it was decided by the Central Authority of Chandigarh Administration vide letter No.27/4/9-UTFII(12)-2014/9422 dated 07.11.2014 to appoint Category 'D' employees through an outsource agency for the betterment of this Category of employees in all the departments under the Chandigarh Administration and accordingly in the month of May 2013, after taking approval from the competent authority but the same could not be finalised due huge financial implications. Simultaneously, SPIC (Society for Promotion of IT in Chandigarh) a society working under the aegis of Department of IT i.e. management No.1 has also floated a tender for housekeeping and security staff for the Sampark Centres and IT Park needs. Accordingly, it was decided to obtain the services of the contractor selected by SPIC for contractual staff requirement of EDC Building. In the meantime, the services of these daily wages staff including the workman were approved to be extended / continued upto 30.11.2015. It was also decided that after selection of contractor by SPIC, the same contractor shall be utilised for supplying needs of the EDC Building and by bringing the workman including other daily wagers also under its roll to benefit with ESI and EPF etc. After the due selection of contractor i.e. M/s Sherwal Enterprises by SPIC, the workman was asked to register with the said contractor for re-appointment and to avail benefits of deduction of ESI and EPF etc. from the salary. The workman refused to register with the contractor as is apparent from his letter dated

23.11.2015. Since the contractor was assigned the work of providing the staff and when the workman refused to register with the contractor, the contractor appointed its own staff in the EDC Building w.e.f. 01.12.2015. Accordingly, the services of the daily wages staff including the workman, who refused to get registered with the contractor appointed for the purpose as a policy matter left no option with the contractor but to arrange other resource to continue the services at EDC Building. It was the positive gesture on the part of the management department to advice the workman to register with the contractor for own benefits such as deduction of ESI, PF, gazetted holidays and Sunday off etc. However, the workman chosen not to register with the contractor. The first preference for appointment was given to the workman and co-workers who all were daily wage workers but they refused to register with the contractor.

3. Further on merits, it is admitted to the extent that the workman was hired by the employer / management for Housekeeping on daily wages and was further deployed at EDC Building at Rajiv Gandhi Chandigarh Technology Park, Chandigarh in the year 2012-13. There is no sanctioned post with the employer/ management therefore the workman was hired against non-sanctioned post on daily wages. It is denied that the workman has been assigned other works such as Peon, Chowkidar, Attendant or a Carrier since appointment. She was only performing the work of Housekeeping. The facts that since the date of her appointment, the workman was working to the entire satisfaction of her superior and that she never gave any chance of complaint and there was no adverse remarks against her, are replied being matter of record. The workman was paid remuneration on the basis of number of working days. Accordingly, remuneration per month was credited to saving account. As policy matter and for the better of Category 'D' employees, Chandigarh Administration vide letter No.27/4/9-UTFII(12)-2014/9422 dated 17.11.2014 decided to appoint these employees through an outsource agency in all the departments at the Chandigarh Administration. However, the same could not be finalised due to huge financial implications. Thereafter, the Society for Promotion of IT in Chandigarh (SPIC), a society working under the aegis of Department of IT floated a tender for housekeeping and society staff for Sampark Centres and IT Park needs. Accordingly, it was decided to obtain the services of the contractor selected by SPIC for contractual staff requirement of EDC building. In the mean time, the service of the applicant was approved to be extended till 30.11.2015. It was also decided that the workman would be brought under the rolls of contractors and would also benefit from ESI and EPF etc. Finally, M/s Sherwal Enterprises was appointed contractor by SPIC and the workman was asked to register with the said contractor for re-employment which would have been entitled her for the benefits of ESI and EPF etc. However, the workman did not register with the contractor. The services of the workman were never terminated by the management. However, it is the workman who refused to work with the contractor. The workman was not in continuous employment with the employer / management as she was not paid for non-working days / holidays notified by the Chandigarh Administration from time to time. The employer-management never terminated the services of the workman. It is the workman, who refused to register with the contractor so she is not entitled for reinstatement. The workman did not register with the approved contractor for re-employment and the contractor appointed his own staff in EDC building w.e.f. 01.12.2015. Accordingly, the services of the daily wage staff including the workman, who did not register with the approved contractor, being a policy matter, was no more required by the management. Since the workman did not registered with the approved contractor for re-employment, her services through the approved contractor could not have been utilised. However, it is correct that the department had offered her to join the service under the contractor to which she refused to work under the contractor. The department had paid the salary of the workman including arrear in full which is evident from the statement downloaded from the Composite Financial Accounting System of the Chandigarh Administration. Further similar plea is taken as taken in the preliminary submissions. The services of the workman were never terminated by the management. In fact the workman was given an opportunity for reemployment through the approved contractor which is legal and in compliance of letter No.27/4/9-UTFII(12)-2014/9422 dated 07.11.2014 of the Chandigarh Administration to outsource services of category 'D' employees through a contractor. The workman failed to register with the approved contractor for re-employment and her services cannot be restored / reinstated at this stage being the fact that the approved

contractor hired his own staff to provide housekeeping services for the employer / management. Hence, the workman is neither entitled to reinstatement nor to any back wages. Prayer is made that the present claim statement may be dismissed with costs in the interest of justice.

4. The workman filed replication wherein contents of the written statement are denied as wrong except admitted facts of the claim statement and averments of claim statement are reiterated.

5. From the pleadings of the parties, following issues were framed vide order dated 04.07.2019 :-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief she is entitled to, if any ? OPW
2. Relief.

6. At the stage of workman's evidence, workman expired on 15.08.2019, thus on 18.12.2019 an application under Order XXII Rule 2 CPC was filed to implead Legal Representatives of the deceased workman. Vide order dated 03.09.2021 passed by the Predecessor Court of Smt. Anshul Berry, Presiding Officer, Industrial Tribunal & Labour Court, U.T. Chandigarh, Shri Jaya Suriya (son), Jaya Parkash (son), Natharsha (daughter), Picha Pillai (husband) as mentioned in the application, were ordered to be arrayed as parties in the present industrial dispute. Amended memo of parties was filed on 03.09.2021 wherein workman Selvi is impleaded through her Legal Representatives Jaya Surya & Others (in the amended memo of parties Jaya Surya & Others mentioned at serial No.a) to (d) are incorrectly mentioned as Legal Heirs instead of Legal Representatives).

7. In evidence Jaya Surya, one of the Legal Representatives of deceased workman examined himself as AW1 and tendered into evidence his affidavit Exhibit 'AW1/A' along with copies of documents Mark 'A' to Mark 'K'.

Mark 'A' is copy of death certificate dated 20.08.2019 of Selvi.

Mark 'B' is original joint affidavit dated 18.12.2019 of Picha Pillai, Natharsha.

Mark 'C' is copy of muster roll for the month of April 2013.

Mark 'D' is copy of muster roll for the month of November 2015.

Mark 'E' is copy of bank passbook of Indian Bank bearing A/c No. 6063643934 of Selvi.

Mark 'F' is copy of representation dated 23.11.2015 regarding non-shifting of House Keeping Staff of EDC under private contractor.

Mark 'G' is copy of application dated 01.12.2015 regarding expelling the applicants from their services for the last more than 3 and ½ years without giving prior notice from the EDC building, I.T. Park Chandigarh.

Mark 'H' is copy of letter dated 21.03.2016 regarding work of Sherwal Enterprises is not satisfactory.

Mark 'J' is copy of demand notice dated 19.12.2017.

Mark 'K' is copy of failure report dated 19.03.2018 of Assistant Labour Commissioner-cum-Conciliation Officer, U.T, Chandigarh.

8. It is pertinent to mention here that AW1 in his affidavit Exhibit 'AW1/A' mentioned that Legal Representative Natharsha has expired on 07.11.2021. On 04.01.2024 Shri Davinder Lubana - Representative for LR's of the workman tendered into evidence documents Exhibit 'W1' to Exhibit 'W7'.

Exhibit 'W1' is death certificate of Selvi.

Exhibit 'W2' is copy of bank account passbook of Salvi maintained with Indian Bank, SCO No.824, Shivalik Enclave, Manimajra containing entries from 07.09.2012 to 15.03.2013 and 10.11.2015 to 17.12.2015.

Exhibit 'W3' is certified copy of representation dated 23.11.2015 to The SIT, Deluxe Building, Sector 9, Chandigarh by the EDC Staff, IT Park, Chandigarh.

Exhibit 'W4' is Memo No.335-337 dated 28.01.2014 issued by Manager, EDC, Department of Information Technology to Ms. Manjula, Ms. Selvi and Mr. Rajinder, Housekeeping Staff, on the subject meeting with ADIT.

Exhibit 'W5' is attested copy of application dated 01.12.2015 moved by Arvind & Others (including Salvi, workman) to The Advisor to the Administrator, Chandigarh for expelling the applicants from their services.

Exhibit 'W6' is notice issued to the Director, Department of Information Technology by the Assistant Labour Commissioner-cum-Conciliation Officer, U.T, Chandigarh with regard to demand notice raised by Ms. Selvi.

Exhibit 'W7' is attested copy of order dated 30.08.2017 of Hon'ble Central Administrative Tribunal, Chandigarh.

9. On 21.03.2024 Shri Davinder Lubana - Representative for Legal Representative of the workman closed evidence in affirmative on behalf of the workman.

10. On the other hand, the management examined MW1 Reema Kapoor - Senior Assistant (outsourced), Department of Information Technology, Chandigarh Administration, who tendered her affidavit Exhibit 'MW1/A' along with documents Exhibit 'M1' to Exhibit 'M5' and Mark 'MA'.

Exhibit 'M1' is authority letter dated 10.05.2024 issued in favour of Reema Kapoor by Director, Information Technology, Chandigarh Administration.

Exhibit 'M2' is attested copies of documents i.e. letter dated 07.11.2014.

Exhibit 'M3' is salary statement dated 05.11.2015 issued in favour of workman (Selvi) at Sr. No. 10.

Exhibit 'M4' is salary statement dated 07.12.2015 issued in favour of workman (Selvi) at Sr. No. 7.

Exhibit 'M5' is statement dated 15.12.2015 of arrears paid.

Mark 'MA' is letter dated 23.11.2015 issued by the workman to The Director Information Technology.

11. On 25.07.2024 Learned Law Officer closed oral evidence on behalf of the management. On 27.08.2024 Learned Law Officer closed documentary evidence on behalf of the management.

12. I have heard the arguments of Learned Representative for the parties and perused the judicial file. My issue-wise findings are as below :-

Issue No. 1 :

13. Onus to prove this issue is on the workman.

14. Under this issue Jaya Suriya, Legal Representative of workman examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto. AW1 categorically deposed that all the Legal Heirs have no objection if Jaya Suriya may be impleaded workman's only Legal Representative and benefits whatsoever including service / job may be given to Jaya Suriya only. AW1 placed on record the joint affidavit dated 18.12.2019 of Picha Pillai, Natharsha and Jaya Parkash (Jaya Parkash through his father Picha Pillai, being minor aged 17 years) vide Mark 'B'. AW1 supported his oral version with documents Mark 'A' to Mark 'K'.

15. To corroborate the testimony of AW1 Learned Representative for workman referred documents Exhibit 'W1' to Exhibit 'W7'.

16. On other hand, the management examined MW1 Reema Kapoor - Senior Assistant, Department of Information Technology, Chandigarh Administration, who vide her affidavit Exhibit 'MW1/A' deposed the entire contents of the written statement and supported her oral version with documents Exhibit 'M1' to Exhibit 'M5' and Mark 'M/A'.

17. From the oral as well as documentary evidence led by the parties, it comes out that it is undeniable fact that on 02.08.2012 the workman was hired as Housekeeping Staff against non-sanctioned posts by the employer/management directly on daily wages and was deployed at Entrepreneur Development Centre (EDC) Building at Rajiv Gandhi Chandigarh Technology Park, Chandigarh. It is also not specifically denied by the workman that no appointment letter was issued to the workman. In this regard, AW1 in his cross-examination stated that his mother joined the management-department in the year 2012 on daily wages. He does not know whether management had ever issued any appointment letter to his deceased mother. MW1 in her cross-examination admitted as correct that the workman was appointed on daily wages. Undisputedly, the workman worked as Housekeeping with the management from 02.08.2012 to 30.11.2015. In the claim statement, the workman has pleaded that on 01.12.2015 she was informed by the department that her services along with six other workmen are no more required in their department and they have to join their service under the contractor if they want to work with the department. The management in the written statement pleaded that the workman did not register with the approved contractor for re-employment and the contractor appointed his own staff in the EDC building w.e.f. 01.12.2015. The aforesaid pleas taken by the parties in their respective claim statement and written statement endorsed the fact that the workman worked up to 30.11.2015 with the management.

18. Learned Representative for the workman referred cross-examination of MW1 Reema Kapoor wherein she has admitted as correct that the workman was appointed on daily wage basis. MW1 admitted as correct that the workman was employed in the department after the posts were approved / sanctioned by the competent authority. MW1 admitted as correct that no written notice as per the Industrial Disputes Act has been given to the employee before her removal. MW1 denied the suggestion as wrong that the department has not complied with the provisions of the Industrial Disputes Act. MW1 denied the suggestion as wrong that the department had removed the workman to adjust near & dear of their employee. MW1 denied the suggestion as wrong that the services of the workman were terminated with malafide intention. MW1 further denied the suggestion as wrong that removal of workman amounts to unfair trade practice. MW1 in her cross-examination admitted as correct that when the contractor was given outsourcing contract which started from

01.12.2015, the posts of Group 'D' were not lying vacant in their department. By referring to the aforesaid version of MW1 Learned Representative for the workman contended that the services of the workman are terminated in view of letter dated 07.11.2014 / Exhibit 'M2'. The management has wrongly interpreted the contents of Exhibit 'M2' according to which all the Group 'D' posts as and when fallen vacant are to be filled up through outsourcing after following proper procedure. In the present case when the letter dated 07.11.2014 / Exhibit 'M2' was issued, at that time the workman was already working against the post, therefore, the said post could not be considered as vacant. But the management / department after removing the workman from the post, deployed another employee on the same post through outsource contractor which show that there is still requirement of the post from which the workman has been removed. Moreover, during her tenure the workman served the management / department in a satisfactory manner and there was no complaint against her conduct.

19. On the other hand, Learned Law Officer for the management has contended that the services of the workman were not terminated. In view of policy of the Government formulated vide letter dated 07.11.2014 / Exhibit 'M2', there was requirement to fill all the Group 'D' post as and when fallen vacant through outsourcing after following proper procedure and in pursuance of the said letter Exhibit 'M2', the workman was given option to join through outsource contractor to which the workman refused and thereafter w.e.f. 01.12.2015 the contractual employees were deployed against the vacant post through outsource contractor M/s Sherwal Enterprises. To support his contention Learned Law Officer referred cross-examination of MW1 wherein she stated that as per Exhibit 'M2', the department is not authorised to fill up the post of Group-D on regular basis and the department is only authorised to appoint Group-D post through outsource only. MW1 further stated that she can read this Exhibit 'M2' and understand also. MW1 admitted as correct that as per Exhibit 'M2' the department has to follow the abovesaid instructions which read as *"it has been decided by this Administration that all the Group-D posts as and when fallen vacant are filled up through outsourcing after following proper procedure."*

20. To my opinion for better appreciation of policy of the Government, it would be apposite to reproduce the contents of letter endorsement No.27/4/9-UTFII(12)-2014/9421 dated 07.11.2014 issued from the Finance Secretary, Chandigarh Administration to All Heads of Departments in Chandigarh Administration relating to the subject of filling up of Group 'D' posts through outsourcing - Reg. / Exhibit 'M2'

"I am directed to refer you on the subject noted above and to state that keeping in view the Punjab Government instructions issued vide No.15/74/2010-4PP3/391 dated 18.03.2011 and recommendations of 6th Central Pay Commission Report, it has been decided by this Administration that all the Group 'D' posts, as when fallen vacant, are filled up through outsourcing after following proper procedure."

21. In the present case, the workman has failed to controvert the fact that she was working as daily wager Housekeeping against non-sanctioned vacant post with the management. By virtue of the instructions issued vide letter Exhibit 'M2' it was incumbent upon the department management to deploy an outsource employee against the said post instead of a daily wage workman. Before deploying an outsource employee against the said post, the department / management provided fair opportunity to the workman to apply through the contractor if she is willing to continue to work on the said post but it is the workman who refused to accept the offer. In this regard AW1 (Legal Representative of workman) in his cross-examination admitted as correct that the management offered his deceased mother to join through contractor before relieving from the management. AW1 admitted as correct that the management had paid all the dues his deceased mother. AW1 in his cross-examination denied the suggestion as wrong that the Chandigarh Administration has framed policy on 07.11.2016 to outsource the Group 'D' posts.

22. The plea taken by AW1 in his cross-examination that he does not know whether Chandigarh Administration had framed policy to outsource for Group 'D' posts is devoid of merits because the fact being not specifically denied is deemed to be admitted under the law. Moreover, the letter dated 23.11.2015 / Exhibit 'W3' is addressed from the workmen including the name of the workman Selvi (spelled as Salvi) at serial No.6 to SIT Deluxe Building, Chandigarh and as per the contents of said letter the workman requested that according to new Government policy from Head of Department of EDC Building, they are being shifted under private contractor but they do not want to work under the private contractor and further requested not to shift them and keep them treating employees of EDC Building as previously and they mentioned the three reasons for which they are not willing to work under the private contractor. The said three reasons are reproduced as below :-

- "1) *If we are working under private contractor then they can terminate us any time.*
- 2) *DC rates are also decrease by them.*
- 3) *We are not receiving the salary on time."*

From the above-mentioned contents of Exhibit 'W3' it is duly proved on record that the workman is very much in knowledge of the new Government policy / instructions issued through letter dated 07.11.2014 and this fact falsifies the version of AW1 that he has no knowledge whether Chandigarh Administration had framed policy to outsource for Group 'D' posts. The contents of letter Exhibit 'W3' further supports the plea of the management that the workman was offered to work through the contractor to which the workman refused.

23. In view of the reasons recorded above, the termination of services of the workman is not illegal in any manner rather the workman herself left the job by refusing to accept the offer to join through outsource agency / contractor as per instructions of the Government dated 07.11.2014 / Exhibit 'M2'.

24. Accordingly, this issue is decided against the workman and in favour of the management.

Relief :

25. In the view of finding on the issue above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152

Dated : 27.08.2024

Secretary Labour,
Chandigarh Administration.

CHANDIGARH ADMINISTRATION
FINANCE DEPARTMENT
(ESTATE BRANCH)

Notification

The 30th October, 2024

No. 11/7/74(III)-UTFI(6)-2024/16560.—In exercise of the powers conferred by sub-section (4) of the Section 3 of the Haryana Housing Board Act, 1971 (as extended to the Union Territory, Chandigarh), the Administrator, Union Territory, Chandigarh is pleased to appoint the following members of the Chandigarh Housing Board, Chandigarh established under Sub-Section (1) of Section 3 of the aforesaid Act of 1971 namely :-

A. Official Members

1. Finance Secretary or his nominee
Chandigarh Administration.
2. Chief Executive Officer,
Chandigarh Housing Board, Chandigarh.
3. Estate Officer,
Union Territory, Chandigarh.
4. Chief Architect,
Department of Urban Planning,
Union Territory, Chandigarh.
5. Chief Engineer,
Union Territory, Chandigarh.

B. Non-Official Members

1. Dr. Balbir Singh Dhol, PCS (Retd.)
House No. 449, Sector 20-A, Chandigarh.
2. Ar. Vinod Joshi, Architect (Class-I) (Retd.),
House No. 1277, Sector-19, Chandigarh.
3. Sh. Shakti Prakash Devshali,
S.C.F.- 36, First Floor, Sector-29 D, Chandigarh.

2. The aforesaid Official Members/Non-Official Members shall hold office for a period of three years from the date of issuance of this notification.

MANDIP SINGH BRAR, IAS,
Secretary Housing,
Chandigarh Administration.

"No legal responsibility is accepted for the contents of publication of advertisements/public notices in this part of the Chandigarh Administration Gazette. Persons notifying the advertisements/public notices will remain solely responsible for the legal consequences and also for any other misrepresentation etc."